



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: HU/18429/2016

THE IMMIGRATION ACTS

**Heard at Bradford
Promulgated
On 19 September 2018
2018**

Decision & Reasons

On 25 September

Before

UPPER TRIBUNAL JUDGE HANSON

Between

**ALI ABDUL MAJEED
(anonymity direction not made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Ahmed instructed by B Assured Law.

For the Respondent: Mr Diwnycz - Senior Home Office Presenting Officer.

ERROR OF LAW FINDING AND REASONS

1. The appellant appeals with permission a decision of First-Tier Tribunal Judge Caswell promulgated on the 13 September 2017 in which the Judge dismissed the appeal on human rights grounds.

Background

2. The appellant, a citizen of Pakistan, was born on 13 December 1980. The Judge notes the applicant's immigration history including the application to join his wife in the United Kingdom refused by an Entry Clearance Officer on 16 June 2016.
3. The Judge considered the evidence before setting out findings of fact from [14] in the following terms:
 14. I have seen the SA302, and the sponsor explained that it had been submitted twice to the Respondent, once with the application and once with the appeal. The sponsor gave her evidence very clearly and openly, and her employment and self-employment were supported with numerous documents. I am satisfied that she earns over all in excess of the financial requirement, from both employment and self-employment, and that she submitted the correct documents.
 15. The sponsor also explained that she and the Appellant were in love. In view of the Appellant's appalling immigration history, her faith in his intentions could well be argued to be misplaced, but she is clearly genuine, and on the balance of probabilities I am satisfied that there is family life between them. I take into account the time they have lived together and the visits made by the sponsor to see the Appellant in Pakistan.
 16. However, I fully endorse the Respondent's case that this application is tainted by the Appellant's immigration history in the UK, which has contrived in a significant way to frustrate the intentions of the Rules. I reject outright his attempt to explain this by putting blame on solicitors who have been given no chance to answer the criticisms made. This is not a mandatory ground for refusal, and there is a discretion, but in the circumstances of the appeal, the Appellant's adverse conduct in the past must carry significant weight, and in my judgement justified the decision made.
 17. I note that the doctor's letter from the sponsor states that she has been attending counselling regularly for depression, and that this is due to end soon. However, I note she is able to carry out employment and self-employment on a full-time basis, and this indicates that she is managing normal life. Her evidence before me did not at any point give signs of greater than usual nerves or emotional issues.
 18. Applying at Lord Bingham's five stage test, I accept that the Appellant has shown there is family life between him and the sponsor. However, I do not find he has shown that this would be interfered with if the refusal were maintained. The sponsor has twice been to visit her husband in Pakistan. Despite her account that her mother in law and sister in law were unkind to her in the UK and looked down on her as a divorcee, she made these two visits, and there is no particular evidence of ill-treatment. In addition, the Appellant is a man in apparent good health who could reasonably be expected to work and set up home with the sponsor independently in Pakistan, in a similar way as they appear to have done in the UK. Therefore, there has not been shown to be interference with family life caused by the refusal of entry clearance. Even if there were such interference (which I do not find), the Respondent has shown the interference to be lawful, to promote the legitimate aim of the maintenance of effective immigration control, and proportionate. This is especially the case given the appalling immigration history of the Appellant.

4. The appellant sought permission to appeal asserting the Judge erred in her approach to paragraph 320(11) of the Immigration Rules. It is asserted there is no reference to the decision in PS (paragraph 320(11) discretion care needed) (India) [2010] UKUT 440 making it unclear whether the Judge followed the guidance provided in that case. The grounds assert the Judge failed to set her mind to the relevant question which was whether in the circumstances of this case the appellants breach of UK immigration law was sufficiently aggravating so as to justify the refusal. The grounds assert the Judge failed to properly take into account that the appellant left the UK voluntarily with a view to regularising his immigration status. The appellant also asserts the Judge failed to give detailed and anxious consideration to the situation of the appellant's British spouse and whether it will be reasonable and proportionate to ask the appellant's spouse to relocate to Pakistan to continue family life with the appellant, thus erring in her approach to article 8 ECHR.
5. Permission to appeal was granted by another judge of the First-Tier Tribunal 7 March 2018.

Error of law

6. The Judge was clearly aware of the appellant's immigration history and endorsed the respondent's findings in relation to the question of whether the appellant had contrived in a significant way to frustrate the intentions of the Rules. The Judge finds at [1] of the decision under challenge the following:
 1. The Appellant was born on 13 December 1980 and is a Pakistani national. He claims to have arrived in the UK in 1996. On the 10 January 2015 he applied for naturalisation in the UK and provided in support of this application a forged document saying he had ILR. The Appellant then applied on the 9 September 2014 for leave to remain as the partner of his wife Miriam Ashraf. The application was rejected as he did not pay the application fee. The Appellant renewed his application on the 29 September 2014, and the application was refused on 11 March 2015. He applied for leave outside the Rules on 29 June 2015. The Appellant was encountered by the Home Office on an enforcement visit to his home in the UK on 4 July 2015. He was detained by the Home Office subject to removal directions. He lodged a pre-action protocol and further representations on 5 July 2015. The Pre-Action Protocol was addressed by the Home Office on 10 July 2015. The leave outside the Rules application and further representations were refused no right of appeal on 31 July 2015. On 18 August 2015 the Appellant was notified that he was subject to an enforcement removal on an Emergency Travel Document, to take place on the 27 August 2015. On the 20 August 2015 the Appellants Representative requested that the Appellant to be allowed to leave voluntarily and pay for his own flight. This was accepted. He left the UK on the 25 August 2015. The appellant then applied to join his wife in the UK and was refused by the Respondent the 16 June 2016.
7. The respondent's case is that 320(11) is satisfied as the appellant entered the UK illegally, used a forged document in an attempt to gain British citizenship, remained in the UK for a further 10 years in the knowledge he had no valid leave to be here, created frivolous barriers to his removal, and was detained for 47 days at the public expense

- and only volunteered to pay for his own flight at the last minute, in the knowledge his removal was imminent.
8. The Tribunal in PS (India) found that a decision-maker must exercise great care in assessing the aggravating features said to justify refusal and must have regard to the public interest in encouraging those unlawfully in the UK to leave and regularise their status by entry clearance. The Tribunal also found that all cases must be considered on their merits and are, therefore, fact sensitive.
 9. Although the Judge does not specifically mention PS (India) it is clear from a reading of the decision that the Judge considered the evidence with the required degree of anxious scrutiny, including noting both the reasons why it was said the appellant had contrived in a significant way to frustrate the intentions of the immigration rules and also the circumstances in which the appellant left the United Kingdom voluntarily. The finding of the Judge is that the appellant leaving voluntarily, even at cost to himself, did not warrant the appeal being allowed. Mr Ahmed in his submissions submitted that the Judge should have given greater weight to the fact the appellant left in the public interest, as recognised in PS (India), and less weight to the appellant's conduct in other regards.
 10. As the Judge considered the evidence with the required degree of anxious scrutiny and has given adequate reasons in support of the findings made the weight to be given to the evidence was a matter for the Judge. It is not made out the Judge failed to factor into the assessment that the appellant had agreed to leave voluntarily but noted this was a last-minute decision in the knowledge his removal was imminent and on the advice of a legal representative. There is nothing in the case law that says a person who does leave is entitled to have past conduct disregarded for, as the Tribunal found in PS, this is a fact sensitive issue. The use of a forged document in an attempt to gain British citizenship and therefore a right to remain in the United Kingdom and gain access to all the services to which a British citizen which is lawfully entitled, when the appellant knew he had no such right and sought to mislead the respondent by the use of a forged document together with the other aspects recorded at [13] of the decision, support the finding that paragraph 320(11) is engaged in relation to this appeal. It is not made out the weight given to the competing aspects by the Judge or the conclusion by the Judge that 320(11) is engaged has been shown to be a finding that is either irrational, contrary to the evidence, or not reasonably open to the Judge.
 11. The second ground challenging the article 8 assessment has no arguable merit. The only evidence before the Judge was the witness statement of the appellant's spouse indicating that she wished to remain in the United Kingdom where she has a business and employed income and that she does not wish to live in Pakistan. It is accepted the appellant's wife wishes to remain in the United Kingdom, but this is not the required test. Indeed, there appears to have been nothing before the Judge that properly identified or discussed the correct test or establish that there were any insurmountable obstacles, so far as that term is understood from existing case law, to

family life continuing in Pakistan. The Judge clearly considered the information that was made available with the required degree of anxious scrutiny; but nothing was provided to support a finding that it would be unreasonable or disproportionate to expect the sponsor to leave the United Kingdom and continue family life with her husband in Pakistan. The conclusion to this effect at [18] has not been shown to be infected by arguable legal error. As family life can continue there will be no breach of article 8 ECHR in relation to this aspect.

12. The Judge goes further however in concluding that even if there is interference with family life the respondent has discharged the burden of proof upon him to the required standard to show such interference is proportionate. The Judge recognises in light of the appellant's appalling immigration history that this is an arguably sustainable conclusion. It has not been shown that the dismissal of the claim on human rights grounds is infected by arguable legal error.
13. As the appellant fails to establish any arguable basis for the Upper Tribunal interfering in this decision, the appeal is dismissed.

Decision

- 14. There is no material error of law in the Immigration Judge's decision. The determination shall stand.**

Anonymity.

15. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson
Dated the 20 September 2018